

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**DAVID A. JOFFE,**

**Plaintiff,**

**vs.**

**KING & SPALDING LLP,**

**Defendant.**

Case No. 17-cv-3392 (VEC)

**DECLARATION OF  
ANDREW M. MOSKOWITZ**

**ANDREW M. MOSKOWITZ** declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney admitted to practice law in this court and am Of Counsel to Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins (“JW”), withdrawing attorneys for Plaintiff David A. Joffe (“Mr. Joffe”) in the above matter.

**A. Mr. Joffe’s breach of his retainer agreement**

2. On or about January 25, 2017, Mr. Joffe retained this law firm to represent him. A copy of this agreement (“the Retainer Agreement”) is attached hereto as Exhibit A. As reflected therein, JW agreed to attempt to negotiate a settlement for Mr. Joffe, and if unsuccessful, to file a lawsuit on his behalf. During the negotiation phase, Mr. Joffe paid a fee of \$2,500. When the parties were unable to reach an agreement, JW filed suit. Mr. Joffe agreed to make an initial payment of \$5,000 prior to the filing of suit, and thereafter, “monthly payments of \$1,250 for twelve (12) months on the first day of each month.” Retainer Agreement ¶ 1 at 1.

3. The Retainer Agreement also required Mr. Joffe “[to] pay the following costs and expenses: investigator fees, court reporting costs, expert fees, filing/recording fees, messenger services, court costs, photocopying charges, postage and any other necessary expenses in this matter.” Retainer Agreement ¶ 2 at 2 (Exhibit A). Mr. Joffe agreed to “pay all bills as required by this Agreement. If you do not comply with these requirements, the Law Firm may ask the Court for permission to withdraw from representing you.” Id. ¶ 3 at 2.

4. Mr. Joffe has failed to pay the fees required under the Retainer Agreement. Specifically, he has made only seven (7) of the twelve (12) monthly payments of \$1,250. The final fee payment was made on December 1, 2017. Despite due demand, he has not resumed making these payments.

5. In addition, JW has incurred \$38,475.85 in expenses in this matter. An itemization of these expenses is attached as Exhibit B. In or about the end of October 2017, Mr. Joffe agreed to begin making monthly payments of \$1,250 to be applied against the expenses that had been incurred. Specifically, in an email on October 24, 2017, he represented that he would “continue making these monthly payments until they fully cover the incurred costs or until the case is resolved, at which point any unpaid portion will become due immediately.” Accordingly, on or about January 3, 2018, Mr. Joffe made a payment of \$1,250.

6. Thereafter, Mr. Joffe refused to make any additional payments for expenses. In a February 7, 2018 email, I summarized the situation to Mr. Joffe as follows:

Paragraph 2 holds you responsible for paying all costs and expenses. Paragraph 3 states, “You must also pay all bills as required by this Agreement.” You initially paid all costs as they were incurred.

When your finances became tight you asked for some relief. Accordingly, we agreed (as the email you just forwarded me confirms) that ‘after the end of the monthly payment periods in our original engagement letter, I will continue to make, on the same terms, payments of \$1,250 per month towards outstanding costs incurred by JW. I will continue making these monthly payments until they fully cover the incurred costs or until the case is resolved, at which point any unpaid portion will become due immediately.’ ... Last month you made your first payment for \$1,250 to be credited toward expenses. Now you have told me that you were no longer [going to] do that.

Therefore, you are in breach of our agreement.

Email dated February 7, 2018 (copy attached as Exhibit C).

7. Mr. Joffe responded that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**B. Breakdown in the attorney-client relationship**

8. As the Court is aware, Mr. Joffe is a lawyer with litigation experience. From the outset, he has sought to work as co-counsel and to involve himself in absolutely every aspect of this case. In February 2018, the relationship began deteriorating.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. During the period in which defendants' summary judgment motion was pending—February to May 2018—Mr. Joffe and I had very little contact. After the Court announced at the hearing on May 22, 2018 that it was denying defendant's summary judgment motion, we began discussing the retention of experts and preparation for trial. Over the next month, the relationship between Mr. Joffe and JW deteriorated to the point where the firm concluded it could no longer represent him.

10. Throughout this case, Mr. Joffe has refused to accept our recommendations [REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. An additional disagreement that developed between Mr. Joffe and me concerned the staffing of this matter. [REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. An additional area of disagreement that developed concerned the retention of experts. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16.

[REDACTED]

17.

[REDACTED]

18.

[REDACTED]

19.

[REDACTED]

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[REDACTED]

[REDACTED]

20.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. Mr. Joffe has informed me that, assuming he has an adequate opportunity to engage new counsel, he would consent to JW's withdrawal. Since June 26, Mr. Joffe has actively sought new counsel to assume his representation. I have cooperated in this process and spoken to three (3) attorneys regarding the case. In addition, because the Court declined to stay this case pending JW's motion to withdraw, I have continued to work with economic damages and employability experts that were retained on Plaintiff's behalf.

23. At the hearing on May 22, 2018, the Court established August 3, 2018 as the deadline for the completion of expert discovery is August 3, 2018. See May 22, 2018 Tr. at 38. Prior to its determination that it would seek to withdraw from this matter, JW had agreed to make a joint application with Defendant's counsel to ask the Court to extend the close of expert discovery to September 7, 2018.

Dated: July 13, 2018

/s/ Andrew Moskowitz  
Andrew Moskowitz